

REMARKS

- Claims 1 to 33 remain pending
- Claims 1, 9, 13, 15, 18, and 21 to 33 are independent

SPECIFICATION OBJECTIONS

The Examiner has objected to the specification for minor informalities. Applicants have thus amended the specification to delete references to Applicants' docket numbers and to reflect the most currently known information regarding the referenced patents and applications.

Please note that the application serial number and filing date for the reference to Docket No. ROC920010204US1 was not available to Applicants' representative at the time of filing this response and thus, will be updated in a supplemental amendment.

ALLOWED CLAIMS

Applicants appreciate and acknowledge the Examiner's indication that Claims 9 to 22 are allowed.

SECTION 101 REJECTION

Claims 1 to 8 and 23 to 33 stand rejected under 35 U.S.C. Section 101 as being directed to non-statutory subject matter. The Examiner asserts that the "[c]laims are directed to [an] algorithm that just manipulates data in memory and . . . does not utilize the result to accomplish some useful task."

Applicants respectfully traverse the Examiner's Section 101 rejection. Regarding Claims 1 and 23 to 27 (as previously amended upon the August 7, 2006 filing of the RCE), "[a]n apparatus" is clearly statutory subject matter. Merely because the claimed apparatus includes a "scheduler for a network processor" that is operative to execute an algorithm, does not

preclude the apparatus from being statutory subject matter. Clarification, including a legal basis for such an assertion, is respectfully requested. Absent such legal basis, Applicants assert that the Examiner's Section 101 rejection is improper and respectfully request withdrawal of the same with respect to Claims 1 and 23 to 27.

Likewise, Claims 2 to 8 are directed to the "scheduler of claim 1" which is clearly a tangible and useful feature of the apparatus of Claim 1. Thus, for the same reasons that the rejection of Claims 1 and 23 to 27 is improper, Applicants respectfully assert that the rejection of dependent Claims 2 to 8 is improper and withdrawal of the rejection is requested.

Further, Claims 28 to 33 are directed to a "computer program product", which also is clearly statutory subject matter. Clarification, including a legal basis for asserting that a computer program product is not statutory subject matter, is respectfully requested. Absent such legal basis, Applicants assert that the Examiner's Section 101 rejection is improper and respectfully request withdrawal of the same with respect to Claims 28 to 33.

The Examiner states that "[r]egarding claims 28-33; the specification (page 20) discloses that a computer execute [sic] a carrier wave signal. Carrier wave signal is not statutory subject matter." However, Applicants' specification actually discloses that "[e]ach inventive computer program product may be carried by a medium readable by a computer (e.g., a carrier wave signal, a floppy disk, a hard drive, a random access memory, etc.)." (Specification, page 20, lines 15 to 18) Thus, the Examiner's apparent assertion that Applicants' invention is merely a carrier wave signal is incorrect. As indicated in the specification, Applicants' claimed invention is a computer program product that may be carried on, among other things, a carrier wave.

No. 0716916
Nov. 29, 2006 12:58AM DUGAN & DUGAN P.C.

Regardless, even if Applicants invention was embodied as a carrier wave signal representative of the claimed features recited in Claims 28 to 33, the Examiner's rejection is still not tenable. The Examiner is required to "state all reasons and bases for rejecting claims . . . [and] Office personnel have the burden to establish a *prima facie* case that the claimed invention as a whole is directed to solely an abstract idea or to manipulation of abstract ideas or does not produce a useful result. Only when the claim is devoid of any limitation to a practical application in the technological arts should it be rejected under 35 U.S.C. 101. . . . Further, when such a rejection is made, Office personnel must expressly state how the language of the claims has been interpreted to support the rejection." (MPBP Section 2106) Applicants respectfully assert that the Examiner has not met this burden, nor has the Examiner asserted that the present invention is "nonfunctional descriptive material." Applicants assert the present invention is clearly functional as described.

Finally, even if the clearly statutory features of the rejected claims are ignored (which is improper), the scaling factor of a scheduler is representative of a tangible, real world, physical characteristic of a scheduler and, as described in detail in Applicants' specification, adjusting the scaling factor clearly has a practical application in the use of a scheduler. For this additional reason, Applicants' claims recite statutory subject matter.

More specifically, the scaling factor of a scheduler defines the range over which memory slots are chosen for distributing frames within a queue. (See e.g., Applicants' specification, pg. 6, ln 30 to pg. 7, ln 10) Clearly, slots within a queue are tangible, real world, physical objects. The scaling factor represents a range or subset of these slots within the queue. Thus, the scaling factor is representative

of a tangible, real world, physical object. This scaling factor or range is expressed in a form that allows the scaling factor to be used to compute an enqueuement distance from a current slot (i.e., a slot where a frame will be placed).

Thus, Applicants' invention involves more than a mere abstract calculation and the scaling factor represents more than an abstraction. A physical location (e.g., a slot) within a memory chip functioning as a queue is being identified for storage of an incoming frame from among a range of slots where the particular range of slots that will be considered is specified by the scaling factor.

Further, even if the scaling factor is considered not representative of a tangible, real world, physical object, the invention as claimed clearly has a practical application. As described in Applicants' specification, by adjusting the scaling factor based on the arriving frames (as claimed), error conditions and/or under utilization of queue resources are avoided. (See e.g., pg. 14, lns 14 to 25) Thus, the invention as claimed is limited to a practical application of, e.g., avoiding errors in scheduler queues. Therefore, for at least the above two reasons, Applicants respectfully request that the Examiner withdraw the Section 101 rejection of Claims 1 to 8 and 23 to 33.

CONCLUSION

The Applicants believe all the claims to be in condition for allowance, and respectfully request withdrawal of the objections and issuance of a Notice of Allowance.

Applicants do not believe any fees are due in conjunction with this amendment. However, if an Extension of Time is required to make this response timely, please accept this sentence as such a request and charge Deposit Account No.

PAGE 1111 : RCV'D AT 11/28/2006 11:54:06 PM [Elapsed Standard Time] : SVR:USPTO-EXRF-5/15 : DMS:2738300 : CSID:+19143329082 : DURATION (mm:ss):01:30

04-1696 the requisite fee. Applicants do not believe any other fees are due regarding this amendment. If any other fees are required, however, please charge Deposit Account No. 04-1696. The Applicant encourages the Examiner to telephone Applicant's attorney should any issues remain.

Respectfully Submitted,

Steven M. Santisi, Esq.
Registration No. 40,157
Dugan & Dugan, PC
Attorneys for Applicants
(914) 332-9081

Dated: November 28, 2006
Tarrytown, New York